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Supreme Court of the United States

OCTOBER TERM, 1955.

No. 115

J. S. GARLINGTON by Donald Garlington as next friend, the said J. S. Garlington in his own behalf individually, and Donald Garlington individually as sole heir at law of Jennie Lou Garlington, deceased wife of said J. S. Garlington,

Appellants,

VS.

A. L. WASSON and wife MARTHA WASSON and N. H. REED,

Appellees.

APPEAL FROM THE COURT OF CIVIL APPEALS, ELEVENTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS, EASTLAND, TEXAS

Jurisdictional Statement

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

NO.

J. S. GARLINGTON by Donald Garlington as next friend, the said J. S. Garlington in his own behalf individually, and Donald Garlington individually as sole heir at law of Jennie Lou Garlington, deceased wife of said J. S. Garlington,

Appellants,

VS.

A. L. WASSON and wife MARTHA WASSON and N. H. REED,

Appellees.

APPEAL FROM THE COURT OF CIVIL APPEALS, ELEVENTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS, EASTLAND, TEXAS

Jurisdictional Statement

Note: All references to the Certified Transcript are thus: Tr. 4.

To the Chief Justice of the United States and the Associate Justices of the United States Supreme Court.

INTRODUCTORY STATEMENT.

The Appellants appeal from a judgment of the Court of Civil Appeals of the Eleventh Supreme Judicial District of the State of Texas which was entered on April 8, 1955 affirming a judgment of the District Court of Howard County, Texas. That judgment became final on November 9, 1955 when the Supreme Court of Texas denied Appellants' Motion for Rehearing of its Refusal of Appellants' Application for a Writ of Error. Tr. 47B. *Bacon* v. *Texas,* 163 US 207, 214-215.

This statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial and important question is presented which warrants also, in the alternative, the granting of certiorari.

THE OPINIONS BELOW.

In The Supreme Court of Texas.

No opinion was rendered by the Supreme Court of Texas. The Appellants' Application for a Writ of Error was denied by that Court with the notation "Refused, No Reversible Error". Tr. 47B. Rule 483 of that Court explaining this notation is set out in Appendix A.

In The Court of Civil Appeals of Texas.

The opinion of the Court of Civil Appeals is reported in 279 SW 2d 668. It appears in Appendix B.

In The District Court of Howard County, Texas.

No opinion was rendered by the District Court. The "Judgment of the Court", which incorporates specific Findings of Facts by the jury, is in Appendix C.

GROUNDS OF JURISDICTION.

The Nature of The Proceeding.

The action originated below in a District Court of Texas in Case 6745 as an "Action in Trespass to Try Title". It was brought by appellants Garlington to regain title and possession of their farmer debtors' farm that had been sold in foreclosure and conveyed to the mortgagee-purchaser under state law by a trustee named in a mortgage deed of trust. It was claimed that the sale and conveyance were void because the foreclosure sale and the conveyance to the mortgagee-purchaser occured when the farmers and their farm were under the exclusive jurisdiction of a Court of Bankruptcy. It was claimed also that both the sale and the conveyance were void because they were in violation of an express order of the Bankruptcy Court. Several other issues were involved which are of no importance here. The State District Court in that Case 6745 adjudged against the the plaintiffs. Tr. 14. The Court of Civil Appeals affirmed. Tr. 22. The Supreme Court of Texas denied a Writ of Error. Tr. 47B. This appeal followed.

The Statutes Pursuant to Which the Case is Brought Here.

Title 11 USC Section 203 is the basic statute pursuant to which this appeal is brought. Procedurally 28 USC Section 2101 (c) confers jurisdiction to hear by appeal or certiorari the judgment of any State Court. Also 28 USC Section 1257 (1), (2) and (3) specifically applies.

The Judgment, Rehearing, Notice of Appeal.

The date and the time of entry of the judgment of the Court of Civil Appeals of Texas which is sought to be reviewed was April 8, 1955. Application for a Writ of Error was finally denied on November 9, 1955, by the Supreme

Court of Texas. Tr. 47B. Thereby the judgment of the Court of Civil Appeals was the final judgment by the highest Court of a State in which a decision could be had and it became final on that date, November 9, 1955.

Notice of this Appeal was duly filed on February 3, 1956 with the Clerk of the State Court of Civil Appeals, which was possessed of the Record, and the Clerk of that Court has certified it. Tr. 23A, Tr. 419. From probably an excess of caution a Notice of Appeal was, on the same day, also filed with the Clerk of the State Supreme Court. Time for docketing was on March 30, 1956 extended to May 31 by the Supreme Court of Texas. Tr. 23A.

Statutory Provisions Conferring Jurisdiction.

It is believed that 28 USC Section 1257 (1) and (2) and 28 USC Section 2103 confer jurisdiction on this Court by Appeal and 28 USC Section 1257 (3) and 28 USC Section 2103 by Certiorari.

Cases Sustaining the Jurisdiction.

The following cases sustain the jurisdiction of this Court:

As to Appeals: *Kalb* v. *Feuerstein,* 308 US 433, which in all essentials is like this case.

As to Certiorari: *Rector* v. *City Deposit Bank,* 200 US 405, 411.

The Statutes Whose Validity is Involved.

The Statutes of the United States are involved. They are 11 USC Section 203, 47 Statutes at Large 1470, and 49 Statutes at Large 942. This law rests upon Article I, Section 8, fourth clause, and Article VI, second and third clauses of the Constitution of the United States. Both that law and the cited provisions of the Constitution were violated by the sale and deed to Wasson on January 2, 1940.

There is also involved the Validity of Article 3810, Revised Civil Statutes of Texas, 1925, as it was applied to that sale and deed to Wasson on January 2, 1940 contrary to the order of December 4, 1939 of the Bankruptcy Court.

The pertinent texts of the Constitution and of the Law of the United States and of the Texas Statute appear in Appendix D.

The Questions Presented.

1. While a farmer debtor and his farm are subject to the exclusive jurisdiction of a Court of Bankruptcy by the provisions of 11 USC Section 203, (n), (o) and (p), as specifically adjudicated by this Court in *Kalb* v. *Feuerstein*, 308 US 433, may a mortgage holder, contrary to the order of that Court, through a trustee named in a mortgage deed of trust, extinguish by sale and deed the right of the farmer debtor to redeem his farm from the mortgage and convey his title away from him?

2. While a farmer debtor and his farm are subject to the exclusive jurisdiction of a Court of Bankruptcy by the provisions of 11 USC Section 203 (n), (o) and (p) as specifically adjudicated by this Court in *Kalb* v. *Feuerstein*, 308 US 433, and while such exclusive jurisdiction exists a trustee named in a mortgage deed of trust, contrary to the order of that Court, purports by sale and deed to convey away the title of said farmer debtor and extinguish the farmer debtor's right of redemption, may a state court thereafter confirm said sale, adjudge possession of said farm to the purchaser, quiet the purchaser's title thereto as against said farmer debtor, hold that the purported foreclosure of the lien created in said mortgage deed of trust conveyed full and complete title to the farmer debtor's farm unto the purchaser and divested the farmer debtor

of all right, title and interest in and to the said farm, both as to title and as to possession, and also adjudge that said title and right to possession existed in the purchaser from the date of said purported sale under the deed of trust?

3. After the Statute and the Supreme Court of the United States have clearly marked the bounds between state and federal power under the Constitution and declared emphatically that any attempt by a state, or by any individual, to exercise power which has been exclusively reposed in the United States by its Constitution and Statutes is absolutely void and a nullity, may a state court, or any individual, by any device extinguish a right, privilege and immunity specially set up and claimed under the Constitution and Statutes of the United States and under an order of a United States Court, and convey title to real estate by merely ignoring the Constitution and Statutes of the United States and proceeding as if they do not exist.

STATEMENT OF THE CASE.

Introductory Statement.

A clear understanding of this case requires some preliminary history.

J. S. Garlington and wife were the mortgagors by deed of trust to A. L. Wasson, mortgagee. Plaintiffs' Ex. 9. Tr. 167. As farmer debtor petitioners under Section 75 of the Bankruptcy Act, 11 USC Section 203, they and their farm came under the exclusive jurisdiction of the Bankruptcy Court. The Judge of that Court on December 4, 1939 issued an order of disclaimer to become effective on January 3, 1940 conditioned that if Garlington should tender to Wasson the principal and interest due under the mortgage, plus $1100 as attorney fees, ON or before January 2, 1940

Wasson should accept the same as full and final payment and execute a release therefor. The Court expressly retained its jurisdiction for that purpose. If Garlington did not so redeem, the farm was disclaimed and discharged from the administration of the Court on January 3, 1940. Plaintiffs' Ex. 14, and Defendants' Ex. 33. Tr. 167.

Before January 2, 1940, namely on November 25, 1939 and before the order of December 4 was formally issued, the Garlingtons had entered into a contract of sale with N. H. Reed, an appellee herein, to be consummated on or before January 1, 1940. Defendants' Ex. 1. Tr. 145 at 146, end of paragraph 5, and at Tr. 148, paragraph 11. That contract of November 25, 1939 which preceded the Order of December 4, 1939 was the basis of the Order. Testimony of Reed. Tr. 233, top half of page.

Prior to January 2, 1940 Garlington had the required amount ready to pay but Wasson refused to accept it, demanding more. Judgment of the Court. Tr. 14, in which are incorporated Special Issues and Answers 3, 4 and 5 at Tr. 15 and Special Issue and Answer 14 at Tr. 17.

On January 2, 1940 while the case remained under the exclusive jurisdiction of the Bankruptcy Court and while Garlington still had the right to pay off the mortgage, the farm was sold to mortgagee Wasson, who was the only bidder, by the trustee under the deed of trust. Testimony of Don Garlington. Tr. 314 at 333. Defendants' Ex. 3. Tr. 152 at 153, end of paragraph 3. Plaintiffs' Ex. 5 which is also Defendants' Ex. 13. Tr. 163, lower half of the page. It is set out in full in Appendix E. This is the subsequent judgment in Case 3807 explained in the next paragraph adjudging title to be in Wasson on January 2, 1940.

On January 3, 1940, the day after the trustee's sale, the mortgagee-purchaser Wasson began an "Action in Sequestration" in the State District Court in Case 3807 to clear title out of the Garlingtons into Wasson himself. Identification of file mark by Appellees' counsel, Defendants' Ex. 4 (which is the file mark only of the petition in Case 3807) which appears at Tr. 284, middle of page. Also Defendants' Ex. 3. Tr. 152, which was Plaintiff Wasson's First Original Amended Petition in 3807 filed a year later. Identified by Defendants' at Tr. 284, top of page. That State Court on May 14, 1941 gave judgment for Wasson in Case 3807. Plaintiffs' Ex. 5, Defendants' Ex. 13 at Tr. 163. Offered at Tr. 285, bottom of page, and admitted at Tr. 288. Set out in full in Appendix E.

The Appellees base their title on that judgment in that case No. 3807 in the State District Court (Plaintiffs' Ex. 5 which is also Defendants' Ex. 13. Tr. 163). That judgment adjudged that the Trustee's Sale and Deed in foreclosure on January 2, 1940 conveyed full and complete title to Wasson and divested the Garlingtons, notwithstanding that the farm was on that date still under the exclusive jurisdiction of the United States Bankruptcy Court and the sale violated the order of that Court.

This ends the Interlocutory Statement. The proceedings leading to this appeal are next related.

This Appeal.

Note: A very large portion of the records below concern issues not involved in this Appeal. To cite one example only, at different times both plaintiffs and defendants alleged that Mr. J. S. Garlington was insane. All such extraneous matters are ignored in this Statement of Jurisdiction.

History of This Case.

While Garlington and his wife were farmer debtors under Section 75 of the Bankruptcy Act, 11 USC Section 203, the Judge of the Bankruptcy Court on December 4, 1939 ordered that their farm should be disclaimed from the farmer debtor proceedings as of January 3, 1940. This order by its express terms was upon condition that they should have the right to redeem their farm from the deed of trust mortgage to Wasson by paying certain sums ON or before January 2, 1940. The Order specifically retained jurisdiction to effectuate the redemption provisions. Plaintiffs' Ex. 14, Defendants' Ex. 33. Tr. 172 at 175, top of page.

On January 2, 1940 Wasson sold the farm to himself through the trustee named in his deed of trust, took a deed on the same day and on the following day filed suit for, and later obtained, a judgment in the State District Court in case 3807 that the sale and deed were valid as of January 2, 1940. He then sold the farm to Reed. Judgment in 3807. Tr. 163 at bottom of page. Appendix E. Date of suit. Tr. 284, middle of page. Sale to Reed by Warranty Deed. Tr. 184-185.

The Garlingtons sued Wasson and his grantee Reed in an Action in Trespass to Try Title in the State District Court in Case No. 6745 (from which this appeal stems). That action sought to set aside the judgment of the same Court in the former Case No. 3807 (which had adjudged that the Trustee's Sale and Deed on January 2, 1940 put title in Wasson and divested the Garlingtons) and to have their title and possession restored to them. Judgment was rendered against the Garlingtons and for the defendants Wasson and Reed. Tr. 14, at bottom of 19.

On Appeal the Court of Civil Appeals affirmed. The Supreme Court of Texas denied a Writ of Error and this Appeal followed.

How The Federal Question Is Presented.

The federal question was raised by the appellants Garlington at every stage of the proceedings in each of the three State Courts.

(1). In the Garlington Amended Petition in the State District Court Case 6745 they alleged that the sale on January 2, 1940 was in direct violation of the Order of the Bankruptcy Court of December 4, 1939 Tr. 48 at 51, paragraph V. They further alleged that on January 2, 1940 the farm was in the custody of the Bankruptcy Court. Tr. 48 at 52, paragraph VI. They also alleged that when the 3807 judgment (Appendix E) was rendered the court had no jurisdiction and its judgment was void. Tr. 48 at 52, paragraph VIII.

Judgment was against them in Case 6745 although the jury by its verdict in Special Findings, in response to Special Issues submitted in the Charge of the Court, which were embodied in the Judgment of the Court, found that Garlington (1) offered to pay Wasson pursuant to the order of the Bankruptcy Court, (2) that Wasson refused to accept, (3) demanding more than was due and (4) that Garlington was still able and willing to pay any sum legally due Wasson and/or Reed. Charge of the Court submitting Special Issues 3, 4, 5 and 14. Tr. 92 at 94 and 95. Judgment of the Court embodying the Special Findings. Tr. 14 at 15 and 17. The entire Judgment of the Court in 6745 is in Appendix C.

The theory, though not mentioned in any opinion or in the judgment entry, in 6745, apparently was that the judgment in Case 3807 (Appendix E) validated the illegal trustee's Sale and Deed of January 2, 1940.

(2) The Garlington Motion for Judgment in that Case 6745 after the verdict referred to and cited the Special Findings in the Jury Verdict that Garlington had offered to pay according to the Bankruptcy Court's order of December 4, 1939 and that Wasson had refused to accept that payment, demanding more than the order specified, and that Garlington was deprived of his property without due process of law. Tr. 100, paragraphs II and III. This Motion was denied. Tr. 102.

(3) In their First Amended Motion for a New Trial after the judgment in Case 6745 the Garlingtons claimed error in the judgment for the defendants for disregarding the order of the Bankruptcy Court of December 4, 1939 in the face of the said Special Jury Findings that defendant Wasson had refused to comply with the Order of the Bankruptcy Court by refusing to accept payment and by the sale of January 2, 1940. Tr. 20, paragraph IV. This Motion was denied. Tr. 103.

(4) The Garlingtons appealed to the Court of Civil Appeals. To that Court they argued the exclusive jurisdiction of the Bankruptcy Court and lack of jurisdiction of the State Courts and the violation of the Order of the Bankruptcy Court of December 4, 1939. Tr. 104-110.

(5). They also argued in the Appellate Court that *Kalb* v. *Feuerstein,* 308 US 433, and other federal court decisions clearly made the judgment in 3807 absolutely void. Tr. 104.

The Court of Civil Appeals in *Garlington* v. *Wasson*, 279 SW 2d 668, affirmed the State District Court Case 6745, basing its decision on the former judgment of the State District Court in 3807. The opinion is in Appendix B.

(6) From the State Court of Civil Appeals the appellants sought a Writ of Error in the Supreme Court of Texas. In their Application they urged that the land had been in the jurisdiction of the United States District Court under Section 75 of the Bankruptcy Act and that the State Court in 3807 had no jurisdiction. They invoked the jurisdiction of the Court on the ground that the Bankruptcy Act was involved. They brought up again the exclusive jurisdiction of the Bankruptcy Court at the time of the sale on January 2, 1940. They referred to their Amended Petition in the State District Court, alleging that the District Court in 3807 (Appendix E) had no jurisdiction because of the exclusive jurisdiction of the Bankruptcy Court. They further asserted that the order of the Bankruptcy Court of December 4, 1939 permitted Garlington to redeem on January 2, 1940 and consequently the sale was void. They cited *Kalb* v. *Feuerstein*, 308 US 433, and *Boyer* v. *Bourin*, 61 Fed. Supp. 715. A Petition for rehearing was filed. Tr. 43-46. The Supreme Court of Texas denied a Writ of Error. Tr. 47B.

The Motion for Rehearing was denied on November 9, 1955 and this appeal followed. Tr. 47B.

THE QUESTIONS ARE SUBSTANTIAL.

I.

One reason why this case is of great general importance is because it affects the largest industry which is also a key industry of the nation. It is quite generally understood that industrial instability invariably begins with a

farming depression. It is universally agreed that farming is now a serious impending problem. Section 75 which is involved here is designed to stabilize that industry.

Section 75 of the Bankruptcy Act, 11 USC Section 203, for the relief of farmer debtors was enacted upon the recommendations of Chief Justice Hughes and President Hoover in 1933 and approved along with other relief measures for individuals and railroads, (and somewhat later for corporations and municipalities). All are permanent legislation. Since its original enactment several clarification and enlargement amendments have been applied but it remains essentially the same, although like Topsy it just "growed up". Subsection (c) by amendments from time to time has named a date up to which a petition might be filed by a farmer debtor. The last date so set has expired. Otherwise the Act is in full force. A Bill is pending to effectuate Subsection (c) by a new date. In the last five Congresses twenty-five Bills have been introduced, four of which have been passed by one House or the other, their purpose being to bring into one organic whole the various parts of Section 75 of different vintages. No general change in its effects has been proposed.

The essence of that portion of Section 75 which is involved here is that when a farmer debtor files a petition under it he and all of his property thereby become subject to the exclusive jurisdiction of the Bankruptcy Court. All acts of individuals and of officials and of all other courts that would impinge upon that exclusive jurisdiction are absolutely void—nullities. In *Kalb* v. *Feuerstein*, 308 US 433, this Court emphatically declared sixteen times in its unanimous opinion that such is the law. This Court in other decisions has repeatedly enjoined upon Bankruptcy Courts the obligation to obey the mandate of the statute without deviation. *Wright* v. *Logan*, 315 US 139, 141-142.

Wright v. *Union Central*, 311 US 273, 278-279. *Borchard* v. *California Bank*, 310 US 311, 316-317. *John Hancock* v. *Bartels*, 308 US 180, 187. To countenance foreclosure under state law in spite of exclusive federal jurisdiction would invite chaos and make a mockery of the fundamental principle that the United States Constitution and the laws enacted in pursuance thereof are the Supreme law of the land binding on all courts, officials and individuals.

II.

A second reason why this case is of great general importance is that this Court has definitely and decisively adjudicated the main provisions of Section 75 so that its force and effect are clearly understood by all whose duty it is to be guided by it. Congressional codification will of course be grounded upon the Act as it exists and upon this Court's adjudications of its effects. However the diametrically opposed acts and court decisions below in this case could cloud the effect of all of the Court's adjudications if this Court allows them to go unnoticed. Such adjudications of this Court are:

1. *Wright* v. *Vinton*, 300 US 440. Resolving conflicting decisions. Section 75 (s) is constitutional. (The constitutionality of Section 75 (a) to (r) for composition and extension has never been seriously questioned in any court.)

2. *First National Bank* v. *Beach*, 301 US 435. Resolving conflicting decisions. Definition of a "farmer" for the purposes of Section 75.

3. *Adair* v. *Bank*, 303 US 350. Section 75 looks toward the maintenance of the farm as a going concern. Powers and duties of conciliation commissioners defined.

4. *Wright* v. *Union Central,* 304 US 502. The "line of cleavage" where exclusive federal jurisdiction takes over is defined. Moratorium period sustained. Two contra decisions of state courts which had not been appealed were referred to but ignored.

5. *John Hancock* v. *Bartels,* 308 US 180. Resolving conflicting decisions. A Bankruptcy Court may not dismiss a farmer debtor case for insufficient value of the security or inability to accomplish successful rehabilitation. The mandate of the statute and the prescribed course of procedure must be observed.

6. *Kalb* v. *Feuerstein,* 308 US 433. Section 75 (n), (o) and (p) reposes exclusive jurisdiction in the Bankruptcy Court upon the filing of a farmer debtor petition and automatically stays all proceedings of all other Courts, and of all officials and individuals and enjoins the beginning of any new action against the farmer debtor or his property. Any such actions by courts, officials or individuals maintained or begun after the filing of the petition are absolutely void, nullities, and subject to collateral attack. In that case also orders of the state court which had not been appealed were held to be void.

7. *Union Joint Stock Land Bank* v. *Byerly,* 310 US 1. (The case arose in the interval after the original Section 75 (s) was held to be unconstitutional and before the present Section 75 (s) was enacted and before Subsection (p) was broadened to make more definite the scope of subsection (o).) An order of a Bankruptcy Court disclaiming a farmer debtor's farm without observing the procedures designated in subsection (o) is unlawful but not void, only voidable, and if not reversed upon review becomes binding so that state foreclosure pursuant to it divests the farmer debtor's title. Three justices dissented 310 US 11.

8. *Borchard* v. *California Bank,* 310 US 311. A farmer debtor and creditor by private agreement may not deviate from the procedure laid down in Section 75 (s) providing for a three year stay. The orderly procedure of the statute must be observed as prescribed.

9. *Wright* v. *Union Central,* 311 US 273. A farmer debtor must be given opportunity to redeem his farm at its appraised value before it can be sold under Section 75 (s). The statute must be liberally construed, its spirit governs the letter.

10. *Benitez* v. *Bank of Nova Scotia,* 313 US 220. Section 75 stands on its own feet and its definition of a "farmer", not that in the General Bankruptcy Law, controls.

11. *Bernards* v. *Johnson,* 314 US 19. (The case also arose in the interval after the original Section 75 (s) was held unconstitutional and before the present Section 75 (s) was enacted and before subsection (p) was broadened to make definite the scope of subsection (o).) An erroneous order of a Bankruptcy Court which is not void becomes binding if not reversed.

12. *Wright* v. *Sawyer,* 315 US 139. Because of delays in the progress of procedures under a previous Section 74 case for individuals and under a succeeding Section 75 (a) to (r) case for farmer debtors the Bankruptcy Court denied an amended petition under Section 75 (s) and dismissed the case stating that the farmer debtors had already had the equivalent of a three year moratorium provided by Section 75 (s). It held, citing six previous decisions on Section 75, that the right to seek the moratorium under Section 75 (s) could not be denied.

13. *State Bank* v. *Brown*, 317 US 135. Resolving conflicting decisions. Where a farmer debtor's farm was sold in state foreclosure and the state right of redemption had expired and then a petition 75 was filed after which the deed was delivered to the purchaser, the farm did not come under Section 75 because pursuant to state law upon sale the title was divested and all right of redemption had been extinguished. Three justices dissented. 317 US 142.

14. *Pfister* v. *Northern Illinois*, 317 US 144. A petition for review of a conciliation commissioner's order filed after ten days is out of time because Section 39 (c) of the Bankruptcy Act governs in the absence of any applicable provision in Section 75.

15. *Mangus* v. *Miller*, 317 US 178. Where joint tenants with right of survivorship contracted to purchase land and after default one joint tenant alone filed a Section 75 petition that joint tenant's right must be administered through Section 75 (a) to (r) for attempt at composition or extension and if necessary through Section 75 (s) with stay and right of redemption before sale.

16. *Wragg* v. *Federal Land Bank*, 317 US 325. After a farmer debtor petition for composition or extension had failed the Bankruptcy Court dismissed the case and an attempt to appeal failed and this Court denied certiorari. Two years later, one day before the state right of redemption expired, the farmer debtor applied to the Bankruptcy Court for reinstatement of her case or in the alternative that she be permitted to file a new petition for composition or extension. This Court held that notwithstanding the failure under the first petition she had a right to initiate a new proceeding by petition under Section 75 (a) to (r) for composition or extension.

17. *Harris, Administrator* v. *Zion Savings Bank,* 317 US 447. Resolving conflicting decisions. Section 75 (r) declares that the personal representative of a deceased farmer is a "farmer" for the purposes of Section 75. A farmer debtor filed her petition for composition or extension under Section 75 and died soon thereafter. The administrator of her estate applied to the probate court for leave to proceed in the Bankruptcy Court on behalf of the deceased's estate. The probate court denied the application. It was held that where a state law prohibits an administrator from dealing with real estate, the United States statutes do not override the state law and the administrator could not continue the farmer debtor proceeding under the provision in Section 75 (r) which requires the administrator to obtain consent from the probate court to proceed in place of the deceased farmer debtor. Three justices dissented. 317 US 453.

It will be observed that there was no dissent from any decision of this Court which construed liberally the provisions of Section 75, but that there were vigorous dissents in three cases where those provisions were strictly adhered to. The three cases were: *Union Joint Stock Land Bank* v. *Byerly,* 310 US 1 at 11; *State Bank* v. *Brown,* 317 US 135 at 142; *Harris, Administrator* v. *Zion Savings Bank,* 317 US 447 at 453.

III.

A third reason why this case presents an important substantial question of great general importance is the grave duty of this Court to exercise its supervisory powers to insure that "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, anything in the Constitution

or Laws of any State to the Contrary notwithstanding . . . and all . . . judicial Officers, . . . of the several States, shall be bound by Oath or Affirmation, to support this Constitution;" . . .

Only this Supreme Court of the United States, one of the coordinate departments of the government of the United States, can make sure that there shall not be one interpretation of a plain mandatory federal statute for Wisconsin and a diametrically opposite one for Texas. It is bound to overrule the actions of all those who would flout the United States Constitution and laws by proceeding as if they were convinced that by going quietly about it, never mentioning the overriding power of the United States, they would not attract the attention of Uncle Sam and draw his admonition down upon their heads—that if they would but tiptoe silently around him, he will not be disturbed in his sleep. The power of the law never sleeps.

This Court said in *St. Louis Ry.* v. *Taylor,* 210 US 281 at 294, that "it may not be out of place to say that in no other manner can a uniform construction of the statutory laws of the United States be secured, so that they shall have the same meaning and effect in all the states of the Union."

IV.

A fourth, and most impelling, reason why this Court should exercise its supervisory power by enquiring into the merits of the appellants' assertions is that they maintain that there is at stake the ancient issue of whether this shall continue to be a government of laws and not of men. Only this Court can determine whether such an issue is before it. This Court as "the keystone of the arch of Constitutional government," must so determine. If the decisions of this Court may be flouted, then that "keystone of

the arch'' is shattered and the Constitution and the laws passed in pursuance thereof, and the adjudications of this Court declaring the effect of such laws, possess no more force, indeed less force, than that which any individual or officer or judge deems it expedient to accord them.

V.

A fifth reason why this Court should exercise its jurisdiction is that whereas this Court in *Kalb* v. *Feuerstein*, 308 US 433, rendered void and of no effect whatever every such act, order and decision relating to this case which occurred after the Order of the Bankruptcy Court of December 4, 1939 (granting the right of redemption up to and including January 2, 1940 and reserving jurisdiction until January 3, 1940) yet the individuals and courts involved in them treated every one of them as valid. The conflict is clear and unequivocal. Either this Court's decisions prevail and the acts and decisions below are nullities or the decisions of this Court have no effect in Texas and the acts and decisions below prevail in that state.

VI.

A sixth reason why this case is important and should be heard is that although the appellants clearly and repeatedly specially set up and claimed under the Constitution and statutes of the United States their title and right to their farm and their privilege and immunity from foreclosure while the jurisdiction of the Bankruptcy Court embraced the farm and its owners and the order of that Court specifically ordered that they should have the right to redeem their farm by paying a sum named by the Court and that the mortgage holder should accept it, nevertheless the mortgage holder, his trustee and the state Courts proceeded to ignore the plain provisions of the statutes of the United

States and the order of the United States Court and acted in direct conflict with the decisions of this Court. Thus the authority of the United States was ignored by subtle erosion wearing away of a firmly established statutory and legal principle.

VII.

A seventh reason, though probably fairly implicit in the reasons already listed, is that before this Court completed the full series of adjudications on about every possible misconception of or deviation from the letter and spirit of Section 75, there were many different and conflicting decisions and actions by federal and state courts, agencies and individuals. As the adjudications of this Court were announced, one by one the divergencies were corrected and all fell into line on one problem or another until harmony was restored. An incomplete digest of federal and state decisions following the various decisions of this Court clarifying the letter and purpose of Section 75 has disclosed so far a total of fifty-six such decisions governed by this Court's interpretation of Section 75. These fifty-six complying decisions by lower federal and state courts were not all in Section 75 cases but included other statutes for the "Relief of Debtors" initiated by Chapter VIII of the Bankruptcy Act. This uniformity of compliance is disrupted if this Court permits to stand without a hearing the conflicts established below and the disruption would extend into the other similar statutes.

The Facts are not Disputed.

There is no dispute over the facts that are involved in this appeal. Such undisputed facts are these:

1. On January 2, 1940 when the farm was sold and deeded to the mortgagee the Garlingtons were farmer debtors subject to the exclusive jurisdiction of the Bankruptcy Court. Tr. 172 at 175.

2. In disregard of the "definite course of procedure" prescribed by Section 75 and the decrees of this Court, the Bankruptcy Court presumed to issue its order of December 4, 1939 permitting Wasson the mortgagee to sell their farm. This is "water over the dam" because it was not appealed. *Union Joint Stock Land Bank* v. *Byerly*, 310 US 1. But the Bankruptcy Court saved the rights of the farmer debtors in its December 4 order by making it operative only upon condition that the Garlingtons should have the right to redeem the farm from Wasson's mortgage ON or before January 2, 1940 and retaining its jurisdiction to effectuate that order, that is until January 3, 1940. Plaintiffs' Ex. 14 Defendants' Ex. 33. Tr. 172 at 175.

3. On November 25, 1939, before the order of December 4, 1939, the Garlingtons entered into a contract with Reed for an adequate consideration to convey the farm to Reed on or before January 1, 1940. The subsequent Bankruptcy Court's order of December 4 was timed with that contract in mind. Reed's testimony. Tr. 233, top half of page. Defendants' Ex. 1 Tr. 145 at 146, admitted at Tr. 231, near bottom of page.

4. By Special Findings in the verdict of the jury in answers to Special Issues 3, 4, 5 and 14 embodied in the charge of the Court in Case 6745 the jury made four findings which were incorporated in the Judgment of the Court. These four findings were (1) the Garlingtons before January 2, 1940 offered to pay in full compliance with the December 4 Order of the Bankruptcy Court, (2) Wasson refused to accept that offer, (3) he demanded an additional sum not provided for in the order, and (4) Garlington was at the date of the jury findings still ready, able and willing to pay any sum then legally due Wasson and Reed or either of them. Charge of the Court, Special Issues 3, 4, 5 and 14. Tr. 92 at 94 and 95. Judgment of the Court, Special Issues 3, 4, 5 and 14. Tr. 14 at 15 and 17.

5. On January 2, 1940, the last day for redemption named by the Bankruptcy Court Order of December 4, 1939, in which Wasson was ordered to accept the amount due plus $1100, he purchased the farm from his trustee. Defendants' Wasson and Reed's Ex. 3. Tr. 152 at 153 end of paragraph 3.

6. On the day of sale, January 2, 1940, the trustee deeded the farm to Wasson. Judgment in 3807. Plaintiffs' Ex. 5, Defendants' Ex. 13. Tr. 163 near bottom of page.

7. On January 3, 1940, the day after he received the deed, Wasson began a Suit of Sequestration against the Garlingtons in State Court Case 3807 (Appendix E) seeking to have title cleared in him, for possession and for the ouster of the Garlingtons. Wasson's Affidavit. Defendants' Ex. 10, Tr. 178 at 179, top of page. Wasson's replevy bond. Defendants' Ex. 11, Tr. 179 bottom of page.

8. More than a year later, on May 24, 1941, in that case 3807 (Appendix E) it was adjudged that Wasson have possession of the farm, that he have his title quieted, that the trustee's deed of January 2, 1940 conveyed full and complete title to the farm to Wasson and divested the Garlingtons of all right in the farm as to possession and title. Judgment in 3807. Plaintiffs' Ex. 5, Defendants' Ex. 13. Tr. 163-164. Appendix E.

9. Wasson first leased the farm to Reed until Wasson completed legal action to get possession and then he finally sold it to Reed, appellee herein, on March 8, 1943. Reed's testimony Tr. 220 bottom of page. Also Tr. 221-222 and middle of Tr. 226. Defendants' Ex. 39. Tr. 184-185.

10. Reed knew of the order of December 4, 1939 before he purchased the farm and he knew that litigation was expected and kept in touch with court proceedings. Reed's testimony, Tr. 220, also 221-222 and 227.

No Disagreement Over The Law.

Nor is there any disagreement over the federal law. It was merely ignored and the state law was followed precisely as if there existed no federal authority to gainsay it. The applicable federal authorities which were bypassed are:

The Constitution of the United States:

> "This Constitution, and the Laws of the United States which shall be made in pursuance thereof, . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." Article VI, Clause 2.
>
> "The Congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States." Article I, Section 8, Clause 4.

11 USC Section 203 (Section 75 of the Bankruptcy Act) as applicable (summarized):

Subsection (n). The filing of a petition shall immediately subject the farmer and all his property to the exclusive jurisdiction of the court.

Subsection (o). Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted or maintained in any court or otherwise against the farmer or his property:

Proceedings for foreclosure of a mortgage or recovery of land. Proceedings for sale under any mortgage.

Subsection (p). The prohibitions of subsection (o) apply to all judicial proceedings in any court and shall apply to all private creditors and to all the debtor's property. All such property shall be under the sole jurisdiction and control of the court in bankruptcy.

No Doubt Concerning Interpretation of The Constitution and The Law.

These provisions of Section 75 (11 USC 203) have been so clearly and emphatically adjudicated that there is not the slightest doubt of their meaning and application to this *Garlington* case.

Kalb v. *Feuerstein,* 308 US 433, was decided on January 2, 1940. That was the very day that Wasson as mortgagor purchased the Garlington farm in Texas at his trustee's sale and took a deed from his trustee. It was more than a year later that the Texas District Court in 3807, utterly disregarding the year-old decision of *Kalb* v. *Feuerstein,* purported to adjudge that Wasson's title was good by the sale and deed to him on January 2, 1940 and put him in possession, and declared that the Garlington title was divested.

The facts in the *Kalb* case and in this *Garlington* case are remarkably similar. In the *Kalb* case a farm foreclosure was legally entered in a Wisconsin County Court and the sheriff duly sold it to the mortgagees. The owners then filed their petition as farmer debtors in the Bankruptcy Court. However in our *Garlington* case the federal jurisdiction attached long before the sale and the Bankruptcy Court order actually prohibited the sale while its jurisdiction continued. In the *Kalb* case no stay of foreclosure or of subsequent actions by state court or individuals was ever sought or granted in any court. Only Section 75 operated automatically. The sheriff then executed a deed and upon the application of the mortgagee-purchasers the County Court confirmed the sale and issued a Writ of Assistance to the sheriff who ejected the farmer debtors from the farm. No review of the County Court's confirmation of the deed and issuance of the Writ of Assistance was

sought. They were, however, collaterally assailed in another state court by suit for restoration of possession, cancellation of the sheriff's deed and eviction of the mortgagees and by a separate suit for damages against the mortgagees, the sheriff and the County Judge. Those cases went to the Wisconsin Supreme Court which sustained demurrers. The reasoning of that Court was: "No appeal having been taken, no showing having been made in the state court, an order of sale having been confirmed and the purchaser put in possession, the plaintiff is in no position to claim that the order of the Circuit Court is void."

An appeal was granted by this Court. The following is quoted from the opinion:

> 438: "But if appellants are right in their contention that the Federal Act of itself, from the moment the petition was filed and so long as it remained pending, operated, in the absence of the bankruptcy court's consent, to oust the jurisdiction of the State Court so as to stay its power to proceed with foreclosure, to confirm a sale, and to issue an order ejecting appellants from their farm, the action of the Walworth County Court was not merely erroneous but was beyond its power, void, and subject to collateral attack. And the determination whether the Act did so operate is a construction of that Act and a Federal Question.
>
> It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally. Although the Walworth County Court had general jurisdiction

over foreclosures under the law of Wisconsin, a peremptory prohibition by Congress in the exercise of its supreme power over bankruptcy that no State Court have jurisdiction over a petitioning farmer-debtor or his property, would have rendered the confirmation of sale and its enforcement beyond the County Court's power and nullities subject to collateral attack. The States cannot, in the exercise of control over local laws and practice, vest State Courts with power to violate the supreme law of the land. The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, State or Federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. If Congress has vested in the bankrupcty courts exclusive jurisdiction over farmer-debtors and their property, and has by its Act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its Act is the supreme law of the land which all courts—State and Federal—must observe. The wisdom and desirability of any automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer-debtors and their property were considerations for Congress alone.

We think the language and broad policy of the Frazier-Lemke Act conclusively demonstrate that Congress intended to, and did deprive the Wisconsin County Court of the power and jurisdiction to continue or maintain in any manner the foreclosure proceedings against appellants without the consent after hearing of the bankruptcy court in which the farmer's petition was then pending".

. . . . . .

441: "Thus Congress repeatedly stated its unequivocal purpose to prohibit—in the absence of consent by the bankruptcy court in which a distressed farmer has a pending petition—a mortgagee or any court from instituting, or maintaining if already insti-

tuted, any proceeding against the farmer to sell under mortgage foreclosure, to confirm such a sale, or to dispossess under it".

. . . . . .

443: "The mortgagees who sought to enforce the mortgage after the petition was duly filed in the bankruptcy court, the Walworth County Court, that attempted to grant the mortgagees relief, and the sheriff who enforced the court's judgment, were all acting in violation of the controlling Act of Congress. Because that State court had been deprived of all jurisdiction or power to proceed with the foreclosure, the confirmation of the sale, the execution of the sheriff's deed, the writ of assistance, and the ejection of appellants from their property—to the extent based upon the court's actions—were all without authority of law".

. . . . . .

444: "Congress manifested its intention that the issue of jurisdiction in the foreclosing court need not be contested or even raised by the distressed farmer-debtor. The protection of the farmers was left to the farmers themselves or to the Commissioners who might be laymen, and considerations as to whether the issue of jurisdiction was actually contested in the County Court, or whether it could have been contested, are not applicable where the plenary power of Congress over bankruptcy has been exercised as in this Act".

In emphasizing the total ineffectiveness of any attempt by individuals or officials or Courts to circumvent the exclusiveness and the prohibitions of Section 75 the unanimous opinion of this Court in the *Kalb* case expressed its conclusion in no less than twenty-two forms.

It may be of interest and not inappropriate to mention the famous series of *Myra Clark Gaines* cases from Louisiana, involving her title to real estate, which in the vicissi-

tudes of litigation over more than half a century were in this Court thirteen times, and in State Court nine times, finally resulting in judgment and costs in this court in vindication of her title. (First case *Ex parte Whitney*, (1839) 13 Pet. 404; last case *New Orleans* v. *Gaines' Adm.*, (1891) 138 US 595.) See "The Famous Cases of Myra Clark Gaines", State University Press, Harmon, La., 1946.

It is submitted that the decisions of the state Courts below failed in every respect to be guided by the Constitution and Laws of the United States and the decisions of this Court, all of which they wholly ignored. I believe that the questions presented are substantial and of great public importance, calling for the supervisory powers of this Court.

Respectfully,

ELMER MCCLAIN
Lima, Ohio
Counsel of Record
for Appellants.

Lima, Ohio
May 15, 1956

APPENDIX A.

Tr. 47 B

No. A-5396

In The Supreme Court of Texas

J. S. GARLINGTON ET AL.

vs.

A. L. WASSON ET AL.

(From Howard County, Eleventh District)

Date	Orders
Oct. 5, 1955.	Application for Writ of Error refused. No reversible error.
Nov. 9, 1955.	Motion for Rehearing of Application for Writ of Error overruled.

FROM THE TEXAS RULES OF CIVIL PROCEDURE.
RULE 483

Order on Application For Writ of Error. In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court will refuse the application with the docket notation "Refused". In all cases where the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal, the Court will deny the application, with the notation "Refused. No Reversible Error." In all cases where the Supreme Court is without jurisdiction of the case as presented in the application it will dismiss the application with the docket notation, "Dismissed for want of jurisdiction."

APPENDIX B.

Tr. 24-41
279 SW 2d 668
Garlington, et al., v. Wasson, et al.

No. 3153
Court of Civil Appeals of Texas
Eastland
April 8, 1955

First Motion for Rehearing Denied
May 13, 1955

Second Motion for Rehearing Denied
June 3, 1955
Appeal from the District Court of Howard County.
Grissom, Chief Justice:

J. S. Garlington and son, Donald Garlington, have appealed from a judgment denying them recovery against A. L. Wasson and N. H. Reed. This suit was filed on June 22, 1948, as a suit in trespass to try title, by J. S. Garlington and wife against Wasson and wife and N. H. Reed. Appellees filed a plea in abatement to the effect that J. S. Garlington should be compelled to sue through a guardian because he was then of unsound mind, being afflicted with "suititus." The transcript does not show when this plea was filed. It does show that Mrs. J. S. Garlington died and on November 9, 1953, an amended petition and plea in intervention was filed by Donald Garlington, individually and as next friend for his father, J. S. Garlington, who was alleged to be of unsound mind. It was in the nature of a bill of review to set aside a judgment of the District Court of Howard County in cause number 3807, rendered against J. S. Garlington and wife, on May 24, 1941, wherein judgment for title and possession of the four sections of land in controversy was rendered for A. L. Wasson. The grounds alleged for setting aside the

1941 judgment were (1) that J. S. Garlington was of unsound mind and had been since before signing a deed of trust to secure a loan made to Garlington by Wasson in September, 1937, and that Wasson and N. H. Reed, who purchased the land from Wasson, knew, or should have known, thereof but did not inform the court of his condition; (2) because the deed of trust sale under which Wasson claims title was void because made on January 2, 1940, between 10:00 A.M. and 4:00 P.M., although an order discharging the land in controversy from a bankruptcy proceeding provided J. S. Garlington should have until "on or before January 2, 1940" to pay Wasson and (3) because J. S. Garlington was of unsound mind and unable to present other alleged defenses to Wasson's suit. Defendants excepted to said bill of review because there was no allegation that excused the long delay in bringing this suit to set aside a judgment rendered in May, 1941. In this connection appellees alleged that Mrs. J. S. Garlington died intestate in September, 1951, and Donald Garlington, who inherited her interest, if any, did not bring this suit until November, 1953, and that plaintiff should be now precluded from asserting said cause of action. Defendants excepted on the ground that defendants had no duty to care for the interest of J. S. Garlington, even if he was insane, because there was no allegation that Mrs. Garlington was insane and if Garlington was of unsound mind no reason was alleged excusing Mrs. Garlington or Donald from sooner asserting his mental incapacity, nor was there any allegation that the Garlingtons were not represented by counsel who could have but did not present any defense and that their claim of fraud was asserted too late, because the defenses now asserted could have been presented earlier by Mrs. Garlington, Donald, of their counsel and the cause of action for setting aside the 1941 judgment was barred by the statutes and laches and the 1941 judg-

ment was *res adjudicata*. They excepted because the facts alleged did not constitute a meritorious defense to either the sale under Wasson's deed of trust or to the suit that terminated in the 1941 judgment. Defendants alleged the Garlingtons employed an attorney who had the reputation of being a capable lawyer; that said lawyer filed an answer in cause 3807 in the District Court of Howard County and appeared therein as counsel for the Garlingtons and appealed from said judgment to this court, the Supreme Court of Texas and the United States Supreme Court; that if Garlington was of unsound mind, his wife and son and counsel could have, but did not, present such defense and it was thereby waived. Defendants alleged in detail the many legal proceedings engaged in by Garlington and wife during the period of Garlington's alleged insanity and the many attorneys who represented them; that the Garlingtons appeared in person and took an active part therein, consulted with their attorney, furnished evidence and testified, and defendants cited their many appeals and alleged that Garlington's insanity was never asserted and that N. H. Reed purchased the land without notice and for a valuable consideration.

On May 17, 1940, J. S. Garlington and wife, acting through their attorney, filed a plea in abatement in cause number 3807 in the District Court of Howard County to the effect that the four sections were within the exclusive jurisdiction of the United States District Court in bankruptcy and that the District Court of Howard County had no jurisdiction thereof and that Wasson was claiming said land as purchaser at the sale under Wasson's deed of trust and that said sale was void because sold before midnight on January 2, 1940, under the bankruptcy court's order discharging the land from said proceeding, Garlington had until midnight to pay Wasson. The Garlingtons prayed

that the trustee's deed to Wasson be cancelled and that they be awarded title and possession. On January 7, 1941 Wasson filed an amended petition in cause 3807 in the District Court of Howard County in which he alleged the execution by J. S. Garlington and wife of the deed of trust on said land in September, 1937 to secure Wassons' loan of $5000, sale under said deed of trust and Wasson's purchase at the trustee's sale, Wasson alleged the bankruptcy court had rendered a final judgment discharging the land from control of that court. Wasson prayed for judgment awarding him possession of the land, decreeing that the foreclosure of his deed of trust lien was valid and that he had the fee simple title to the land. On May 24, 1941, the District Court of Howard County in case 3807 rendered judgment awarding title and possession to A. L. Wasson. This is the Judgment Donald and J. S. Garlington seek in the present suit to set aside. Said judgment expressly declared the sale under Wasson's deed of trust was valid and that the trustee's deed conveyed title to Wasson. Said judgment recites that J. S. Garlington and wife appeared in person and by their attorney, announced ready for trial, waived a jury and submitted the case to the court. The Garlingtons introduced in the present case their answer in cause 3807, signed by their attorney, in which they alleged, among other things, that the land was within the sole jurisdiction of the Federal Court and the state court had no jurisdiction of the subject matter. Evidence was introduced by them in the trial of cause 3807 in support of said plea. The judgment in cause 3807 recites that the Garlingtons excepted and gave notice of appeal to this court. They did appeal to this court but their appeal was dismissed on February 13, 1942, because J. S. Garlington and wife had not filed briefs. That opinion was not published. The Supreme Court of Texas, on April 22, 1942, refused the Garlingtons' application for

a writ of error and the Garlingtons applied for a writ of certiorari which was denied by the Supreme Court of the United States on January 4, 1943.

In September, 1940, J. S. Garlington and wife, through the same counsel who represented them on the trial of cause 3807, sought another continuance of case 3807 because they could not withdraw the original papers in the bankruptcy proceeding to introduce in support of their plea in abatement. This motion was overruled. But during that trial of cause 3807, J. S. Garlington and wife introduced copies of the bankruptcy proceedings in support of their plea in abatement. Thereupon, the Court granted the Garlingtons a continuance. On October 19, 1940, Wasson filed a petition for mandamus in this court to compel the District Judge to enter judgment or again try the case number 3807 and render judgment. This court refused to grant said petition for mandamus saying we presumed the District Judge would proceed to try the case "as soon as the jurisdiction of the Federal Court has been relinquished over the property involved." *Wasson* v. *Collings, Judge, et al.*, Tex. Civ. App. 145 S.W. 2d 915, 917.

On January 7, 1941, Wasson repleaded and alleged the United States Court had discharged the land from its control and, in another attempt to get a trial, filed another petition for mandamus in this court. This court quoted from the order discharging the land from the bankruptcy proceeding and permitting Wasson to foreclose his lien in the state court, or otherwise. We said:

> "Since it is now made to appear that the Federal Court has relinquished these assets for the reason above stated in its order, there appears to be no legal obstacle barring Wasson from an early trial and determination of the issues arising in said cause in accordance with law and 'agreeable to the principles and usages of law.'" *Wasson* v. *Collings, Judge, et al.*, Tex. Civ. App., 149 S.W. 2d 1041, 1042.

On May 17, 1941, J. S. Garlington and wife, through their attorney, filed an amended answer in cause 3807 setting up the same plea in abatement and alleging defects in the deed of trust sale, a general denial and a plea of not guilty. On May 24, 1941, cause 3807 was tried with J. S. Garlington and wife and their counsel present and participating. The judgment J. S. and Donald Garlington now seek to set aside was rendered at the conclusion of that trial.

For other proceedings involving the land in controversy see *Garlington* v. *Wasson,* 139 Fed. (2d) 183, 64 S. Ct. 1046, 322 US 734, 88 Law Ed. 1568, rehearing denied, 64 St. Ct. 1260, 322 US 770, 88 Law Ed. 1596. There were others. The records in this court and the books show that in all these proceedings, except the second mandamus proceeding in this court, J. S. Garlington and wife were represented by able counsel.

As heretofore shown, on June 22, 1948, J. S. Garlington and wife filed the present suit as a simple suit in trespass to try title against Wasson and Reed. Defendants answered by a plea in abatement to the effect that the case should be dismissed or a guardian appointed for J. S. Garlington. Thereafter, on November 9, 1953, according to the transcript, this bill of review was filed. Mrs. J. S. Garlington having died, Donald Garlington intervened as a plaintiff, individually and as next friend of J. S. Garlington, "a person of unsound mind." They alleged that prior to September 1, 1937, Wasson volunteered to make a loan secured by a deed of trust lien on the land; that Wasson was actuated by fraud; that, due to mental incapacity, J. S. Garlington was unaware thereof, which fact was known to Wasson, and pursuant to such "illegal plan and scheme Wasson procured J. S. Garling-

ton and wife to sign their names to a deed of trust covering the land in controversy"; that J. S. Garlington was then of unsound mind and has been ever since; that Wasson knew or by the exercise of reasonable diligence, should have know thereof; that, about January 3, 1940, Wasson filed suit number 3807 in the District Court of Howard County against J. S. Garlington and wife and obtained a judgment therein on May 24, 1941; that in said suit no guardian acted for Garlington; that Wasson and Reed knew Garlington was of unsound mind or, by the exercise of reasonable diligence, should have know thereof, but they "permitted said judgment to be rendered, and to become final without apprising the court of the unsound mental condition of J. S. Garlington"; that said judgment purported to vest title out of the Garlingtons into Wasson; that it was "void and voidable" and should be set aside because the sale was conducted between 10:00 A.M. and 4:00 P.M. on January 2, 1940, in violation of the order of the bankruptcy court which provided the Garlingtons should have until on or before January 2, 1940, in which to pay their debt to Wasson and that, therefore, the trustee's deed to Wasson, dated January 2, 1940, was void and should be cancelled. The Garlingtons alleged that when Wasson procured advertisement of the deed of trust sale on January 2, 1940, the land was in "*custodia legis*"; that no order releasing said land from the bankruptcy court had become final and the trustee had no authority to advertise it for sale. This defense was well presented and determined against the Garlingtons in the trial of 3807. The Garlingtons offered to do equity, alleging said land should be awarded to them, subject to payment to Wasson or Reed of the amount owing, with credit for the rental value. The Garlingtons further alleged the said acts constituted a fraud on appellants and were good defenses to appellees' suit number 3807 in the District Court

of Howard County, wherein title and possession were awarded Wasson, and that such defenses would have been successfully asserted but for the unsound mind of J. S. Garlington.

They alleged Donald Garlington was the only child of J. S. Garlington and his wife, who died intestate in 1951, and that, therefore, Donald had succeeded to an undivided one-half interest in the land in controversy.

We have before us the record on appeal in case 3807, wherein judgment was rendered against J. S. Garlington and wife in May, 1941. It shows that prior to that trial Garlington and wife had obtained two or more continuances, one on account of the absence of their counsel who tried the case, who was then sick, and another for the purpose of obtaining the order discharging the land in controversy but giving the Garlingtons until on or before January 2, 1940, to pay Wasson. The record shows that the case was not tried for more than a year and four months after it was filed. The record shows the Garlingtons were present in person and by counsel and moved for another continuance in May, 1941, which was overruled; that they strenuously urged their plea in abatement to the effect that the land was still within the exclusive jurisdiction of the Federal Court and they introduced in evidence the bankruptcy proceedings and the testimony of the Conciliation Commissioner with reference to custody of said land by the bankruptcy court, and the petition and order therein. They also introduced evidence for the purpose of showing that notices of the trustee's sale were not properly posted. The record shows they excepted to the overruling of their plea to the jurisdiction and that they appealed from said judgment and filed in this court a transcript and statement of facts. The statement of facts

shows that J. S. Garlington was called as a witness by Wasson; that he testified and testified intelligently; that the Garlingtons called witnesses and, through their counsel, examined them and that they were ably represented in the trial by their counsel, who had also represented them prior to the trial. There was evidence at said trial that at the sale of the land under Wasson's deed of trust Donald Garlington was present; that he was asked if he wanted to bid and said he did not; that Donald Garlington then looked like a man 24 or 25 years of age and that he was associated with his father and they were farming together under the name of "J. S. Garlington & Son, Farms." There was evidence that J. S. Garlington had been elected and served as County Judge of Howard County. See *City of Big Spring* v. *Garlington,* 88 S.W. (2d) 1905. There is no claim by appellants that the Garlingtons were not well represented by their counsel or that there was any lack of diligence or fidelity to their interests on his part. See *Cayce* v. *Powell,* 20 Tex. 768, 771. There was evidence of a prior attempt by Wasson to sell the land under his deed of trust and that such sale was avoided by the Garlingtons "taking the Frazier-Lemke Act."

While the Garlingtons, in this bill of review proceeding, alleged Wasson and Reed knew, or should have known, that J. S. Garlington was at all pertinent times of unsound mind, they nowhere allege that Mrs. Garlington was of unsound mind. They do not attempt to allege or prove that Mrs. Garlington or their son, Donald, who at this late date, intervenes and asserts on behalf of his father that he was during said long period of time of unsound mind, did not then know of such mental condition, if it existed, and they make no effort by pleadings or evidence to excuse the delay of, at least, seven years in asserting such condi-

tion. Actually, the record does not show that it was asserted until late in 1953. The judgment sought to be set aside was rendered in May, 1941.

Appellants neither alleged nor proved any fact that they were prevented by the act of their adversary from properly presenting and having determined on the trial of cause 3807 in 1941. There is neither pleading nor evidence showing that Mrs. Garlington, the son, or their counsel did not know J. S. Garlington's mental condition when case 3807 was tried in 1941, or that they did not know of or were prevented from then setting up every defense they now assert. Under such circumstances, certainly, Mrs. Garlington should be held bound by said judgment. Donald Garlington, individually, asserts only his mother's former interest in the property and is likewise bound by said judgment. Mrs. Garlington should be held to the use of the ordinary diligence of other suitors, otherwise, there would be no conclusiveness in judgments to which married women are parties. *Cayce* v. *Powell*, 20 Tex. 768, 771. The record before us in case 3807 shows the Garlingtons were present in court at the trial of cause 3807; that they were ably represented by counsel, who had previously represented them; Donald Garlington was present at the sale under Wasson's deed of trust and; yet, according to this record, they waited from May, 1941 until after said cause had been lost in the District Court, this court, the Supreme Court of Texas and the United States Supreme Court and had many proceedings and appeals in the Federal courts before they, in 1953, saw fit to assert that J. S. Garlington was of unsound mind when he executed the deed of trust in 1937 and when cause 3807 was tried in 1941. It is inconceivable that if J. S. Garlington was then of unsound mind, his counsel, his wife, and his

son, the son being associated with him in business, did not know of such condition when case 3807 was tried, but Wasson and Reed did know thereof. On the hearing of the bill of review they introduced a member of J. S. Garlington's family, J. S. Garlington's brother and former business partner, who testified that J. S. Garlington had been of unsound mind since 1918. Yet, the Garlingtons here alleged Wasson and Reed knew, or by the exercise of diligence, should have known, that Garlington was of unsound mind when cause 3807 was tried and should have apprised the court of that fact. The court had seen Garlington in connection with case 3807 many times before it was finally tried and judgment rendered. Unquestionably, if J. S. Garlington was then of unsound mind, his wife, his son and his counsel knew or, by the exercise of any diligence, should have known of such condition and they, and not those on the opposite side of the case, had the duty of apprising the court of such condition, if it existed. Wasson and Garlington were dealing at arm's length. Wasson had no duty, under these circumstances, to suggest a defense. There is nothing in the record in any manner tending to show that defendants in said case did anything to prevent the Garlingtons from presenting any defense. Appellees had no duty to furnish evidence or assist appellees with their defense. *Garcia* v. *Ramos*, 208 S.W. (2d) 111, 112 (W.R.). See also 113 A.L.R. 1235, 1236.

In *Kate Ewing, Adm'x* v. *Wilson & Howell*, 63 Tex. 88, 89, Judge Stayton said:

> "If these sales were invalid, and might have been set aside upon proper proceeding, these matters of invalidity existed when the suit of trespass to try title was brought by the appellees against George Ewing,

and existed at the time the judgment in favor of the appellees was rendered in that case, and therein should have been presented or otherwise made available."

The mere fact, if it is a fact, that Garlington, who was well represented by counsel, was of unsound mind when the judgment in case 3807 was rendered against him did not make said judgment erroneous. *Jacob Denni, Guardian* v. *J. T. Elliott, et al.*, 60 Tex. 337, 339. Equity will not vacate such a judgment by reason thereof, unless it is shown that he did not have a fair trial and that the judgment is inequitable. 34 A.L.R. 223.

In *Hubbard* v. *Williams*, 87 S.E. 780, the court dismissed on general demurrer a suit to set aside a judgment rendered against an idiot in an action instituted by her without a guardian, where it appeared the action was brought by the idiot and two others to enjoin a process directed against all of them and no fraud was alleged against the attorney who acted on behalf of the idiot and the bill of review was filed eleven years after rendition of the judgment sought to be set aside.

In *Leonard* v. *The Times*, 51 Ill. Appeals 427 (34 A.L.R. 224), it was held that equity would not vacate a judgment against a partnership because a partner was insane at the rendition of the judgment and not represented by a guardian *ad litem* where the judgment was rendered on a partnership debt and the partnership appeared by counsel, who looked after the interest of the insane partner, and there was no defense available which was not interposed.

In *Farmer's & Merchants' Bank* v. *Duke*, (Sup. Ct. N.C.), 122 SE 1, 34 A.L.R. 215, it was held that a judgment would not be set aside because of the insanity of a defendant at the rendition of a judgment against him, although

he was not represented by a guardian, where he was represented by counsel, his relatives were present at the trial, his deposition was used and no question of his insanity was then raised. This is exactly the situation with reference to Garlington.

In *Baxter* v. *Dear,* 24 Tex. 17, 21, the court said:

> "This court has never gone so far, as to hold that such a judgment can be inquired into, upon equitable considerations; and we have not been able to find any case, in which a court of equity has assumed the power to set aside the solemn judgment of a court of competent jurisdiction, to enable a party to present a defense, which might have been presented in the first suit, and where no fraud is shown in obtaining the first judgment."

Under the circumstances, we think there can be no doubt that the judgment is conclusive as to the rights and interest of Mrs. Garlington and Donald Garlington. In *Howard* v. *North,* 5 Tex. 289, 297, the court said:

> "The facts of *femes covert* in *pias* may be and frequently are void; yet this does not impair the conclusive force of judgments, to which they are parties; and if they be not reversed on error or appeal, their effects cannot be gainsaid when they are enforced by ultimate process, or where they are brought to bear on their rights in any future controversy." See *Metropolitan Life Ins. Co.* v. *Pribble,* 130 S.W. (2d) 332, 337 (W.R.).

In *Nichols* v. *Dibrell,* 61 Tex. 539, our Supreme Court said:

> "It is well settled that the decision of a court of competent jurisdiction is conclusive, not only as to subject matter determined, but as to every other matter which the parties might have litigated in the case and which they might have had decided,— Or, as differently expressed, 'the plea of *res judicata* applies not only to points upon which the court was actually

required to pronounce judgment, but to every point which properly belonged to the subject of litigation, and which the parties, by exercising reasonable diligence, might have brought forward at the time.' "

In *Freeman* v. *McAninch*, 87 Tex. 132, 27 SW 97, 100, 47 Am. St. Rep. 79, the court said:

" 'A party cannot relitigate matters which he might have interposed, but failed to do, in a prior action between the same parties, or their privies, in reference to the same subject-matter.' And if one of the parties failed to introduce matters for the consideration of the court that he might have done, he will be presumed to have waived his right to do so."

In *Long* v. *Martin*, 116 Tex. 135, 287 SW 494, 495, Judge Cureton said:

" . . . the rule that a valid judgment for a plaintiff is conclusive, not only as to defenses which were set up and adjudicated, but as to those which might have been raised inconsistent with the facts necessary to sustain the judgment, is one of universal acceptation. *Cleveland* v. *Ward* (116 Tex. 1), 285 SW 1063, 1070, and cases there cited." See also *Dallas Trust & Savings Bank* v. *Brashear* (Com.) 65 SW (2d) 288; *Great Southern Life Ins. Co.* v. *Johnson*, 25 SW (2d) 1093.

In *Kelley* v. *Wright*, 184 SW (2d) 649, 652, the Court of Civil Appeals said:

"The petition in this case is skillfully drawn, but when we take the whole picture as presented, it is apparent to us that all facts and issues sought to be presented in this application and alleged to present a defense to appellee's original suit in trespass to try title . . . existed and were in the possession and control of appellants at the time of that trial, and it is not settled law that all issues that could have been presented and passed upon by the trial court at that time, will be deemed to have been adjudicated."

In that case those seeking to set aside a judgment by bill of review appealed from the original judgment but, because of their failure to timely perfect their appeal, it was dismissed and the opinion was not published. In case 3803 the Garlingtons appealed but failed to file briefs. Their appeal was dismissed and when their motion for hearing was overruled, they appealed to the Supreme Court of Texas and the United States.

In *Kelley* v. *Wright,* 184 SW (2d) 649, 652, the Court of Civil Appeals said appellants did not show the judgment was rendered against them because of the fraud of appellee and her counsel. Appellants contended that appellee and her counsel knew appellee had no title to the property recovered by her and deliberately concealed that information from the court for the fraudulent purpose of acquiring title, as was done. The court said, at page 653:

> "Granting as we must in this case, that the allegation is true we think it does not disclose fraud as is contemplated by law. We think that if appellee and her counsel had known what appellants hoped to prove at the trial, and when they could not procure their testimony, either from documents or by witnesses, appellee and her counsel were under no legal obligation to assist appellants not to reveal and admit, if they knew, what had expected to prove. The conclusion in appellants' pleading that such acts constituted fraud does not make them such." See *Garcia* v. *Ramos,* 208 SW (2d) 111 (W.R.).

In *Kelley* v. *Wright,* 184 SW (2d) 649, the trial court sustained exceptions to the bill of review and, petitioners refusing to amend, dismissed the suit. The Supreme Court held the court erred in sustaining exceptions to plaintiffs' petition and dismissing the case. However, it affirmed the judgment, holding that the proper judgment was rendered. One of the grounds alleged by petitioners in that case was that respondent knew she held the land as trustee for petitioners and knew she had no title, and deliberately and

fraudulently, withheld such information from the court on the former trial. The other ground alleged was that they lost their suit because they did not then have the necessary evidence to establish their claim, in that, certain documents had been lost. The Supreme Court held that their allegations showed they then knew all the facts which could have been proved by the lost documents and offered no satisfactory evidence of their contents and that such failure was negligence, as a matter of law. The Supreme Court (188 SW (2d) 982, 986), in an opinion by Judge Folley, concluded that such facts left the petitioners without any standing in court of equity to set aside the former judgment by bill of review; that a court of equity would not set aside a judgment by bill of review; that a court of equity would not set aside a judgment when the failure to have a full and fair presentation of their case resulted from the negligence or mistake of the party or his counsel. We think that the same conclusion must be made in this case. The judgment of a court possessing jurisdiction is final, not only as to matter determined, but also to every matter which the parties might have litigated and had decided in this case. *Freeman* v. *McAninich,* (Sup. Ct.), 27 SW 97, 99.

> " ' ' It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." ' " . *Rio Bravo Oil Co.* v. *Hebert,* 106 SW (2d) 242, 246.

The following decisions are to the same effect: *Dallas Trust & Savings Bank* v. *Brashear,* 65 SW (2d) 288, 291; *Ferguson's Estate* v. *Ferguson, et al,* 189 SW (2d) 441; *Ferguson* v. *Ferguson,* 189 SW (2d) 442, 443; *Davis* v. *Biggs,* 182 SW (2d) 1017, 1019; *Cleveland* v. *Ward,* 116 Tex. 1, 18, 285 SW 1063; *Cain* v. *Balcom,* (Com.), 109 SW (2d) 1044, 1046.

There is neither allegation nor proof excusing the long delay in bringing this equitable proceeding to set aside the judgment in case 3807, rendered in May, 1941. This is, at least, the fourth proceeding with reference to that controversy which has been in this court and, as heretofore indicated, it has taken the time of many courts. Land titles should not be in question over a period of many years in many cases between the same parties or their privies. The parties are entitled to finally have an end to this litigation. The Garlingtons neither alleged nor proved when, if ever, Donald Garlington, Mrs. Garlington or their counsel discovered that J. S. Garlington was of unsound mind. If they knew, or by the exercise of diligence should have known thereof, at the time of the trial it was their duty to then assert it. They should not be permitted, because of filing of the plea in abatement, or for any other reasons, to take the unreasonable position that the creditor, Wasson, knew, or should have known, that J. S. Garlington was of unsound mind when case 3807 was tried but that neither his wife, his son, nor his counsel knew thereof, nor, by the exercise of reasonable diligence, could they have ascertained that such condition existed. The records in 3807 and the present case show that the real defenses asserted here, exclusive jurisdiction of the Federal Court and defects in the trustee's sale, were well presented in the trial of cause 3807. Actually, the only thing of importance added in this trial was evidence that Garlington had been of unsound mind for many years. Evidently he was able to present as good a defense in 1941 as now. No one should be permitted, in the guise of a bill or review, to relitigate issues previously fairly tried and determined. *Elder* v. *Byrd-Frost, Inc.*, 110 SW (2d) 172, 174.

Suits of this character, seeking relief from a final judgment rendered long ago by a court of competent jurisdiction, should be carefully watched by courts of equity and

ground therefor restricted. Something more than that injustice might have been done must be shown. Relief is granted only upon a satisfactory showing that the complaining party has been injured by rendition of a judgment where he did not present his defense because he was prevented, without fault or negligence on his part or that of his attorney, from presenting a genuine defense by the wrongful acts of the opposing party. 25 Tex. Jur. 597, 599. There was no such showing made in this case.

The record on the appeal from the judgment rendered in case 3807 in the District Court of Howard County in May, 1941, has been most carefully studied. It shows that J. S. Garlington and wife were well represented by able counsel. The testimony of J. S. Garlington at that trial seems to be that of an intelligent man. Appellants have neither alleged nor proved facts sufficient to justify the setting aside of said judgment. They neither alleged nor proved facts showing they were prevented by their adversaries from presenting any defense, nor did they allege or prove facts excusing the negligence of themselves and their counsel in no sooner presenting the claim of insanity. We think the whole case, when thoroughly and fairly considered, shows that, if such defense existed, the failure to present it, if any, at the trial of case 3807 resulted from the negligence or mistake of the Garlingtons and their counsel; that they were not prevented by appellees from presenting any defenses, and that they had a fair trial. Courts of equity do not set aside judgments under such circumstances. *Nelley* v. *Wright* (Sup. Ct.), 188 SW (2d) 983, 986. See also *Fleming* v. *Sceligson and Ellis*, 57 Tex. 524. The evidence presented by the Garlingtons in this case could lead to only one reasonable conclusion, that is, if J. S. Garlington was of unsound mind when case 3807 was tried, his wife, his son and his counsel knew more

about that condition or, by the exercise of any diligence, could have learned more about it than could the appellees. They have neither freed themselves from a charge of negligence and delay nor convicted appellees of doing anything to prevent them from timely asserting any defense that existed in said case. Procedural errors are shown by appellants but, under all the circumstances of this case, we think no other judgment could properly be rendered. Rule 434; *Kelley* v. *Wright* (Sup. Ct.), 188 SW (2d) 983, 985; *Davis* v. *Donalson,* 91 SW (2d) 763, 765 (W.D.); *Farmers' & Merchants' Bank* v. *Duke,* 122 S.E. 1, 34 A.L.R. 215.

The judgment is affirmed.

Clyde Grissom
Chief Justice

April 8, 1955

Colling, A. J., not sitting.

On Motion for Rehearing

Appellants have filed an able motion for rehearing in which they are respectfully critical of our conclusion that, despite the existence of procedural errors, the judgment denying the Garlingtons recovery should be affirmed for the reason that no other judgment could properly have been rendered. Appellants contend they have a right by bill of review to set aside the judgment rendered in cause 3807 on May 24, 1941, in the District Court of Howard County primarily because the land in controversy was then still within the exclusive jurisdiction of the bankruptcy court. They cite *Nettles et ux.* v. *Doss,* 161 SW (2d) 138. We recognize the correctness of the holding that under the Frazier-Lempke Act exclusive jurisdiction of the property of a bankrupt is in the bankruptcy court until the mortgagee has obtained consent of that court to proceed with foreclosure proceedings. Whether the property here in

controversy had been released from control of the bankruptcy court was in issue and decided in two cases in which the Garlingtons were parties. In *Wasson* v. *Collings,* 149 SW (2d) 1041, 1042, this court held the land in controversy had been discharged from control of the bankruptcy court and abandoned to the creditor, A. L. Wasson, and he had been permitted to foreclose his lien, and, for that reason, the District Judge was ordered to proceed to trial in cause 3807. Wasson sold the land under foreclosure of its deed of trust on January 2, 1940. Thereafter, he filed cause 3807 seeking judgment for the title and possession of said land. Wasson alleged therein that the bankruptcy court had discharged the land from its control and authorized him to foreclose his lien. Garlington and wife alleged the land had not been discharged from control of the bankruptcy court. The Garlingtons obtained a continuance of cause 3807 to obtain evidence to support said contention, which was presented by a plea in abatement. That issue was tried, evidence was heard, J. S. Garlington testified and it was held in cause cause 3807 that the bankruptcy court had discharged the land from its control and authorized Wasson to foreclose his lien, and title and possession of the land was awarded to Wasson. The Garlingtons appealed from that judgment to this court, our Supreme Court and the United States Supreme Court. Said judgment in cause 3807 was affirmed. It was thereby decided a second time, contrary to the Garlington's contention, that the land had been discharged from control of the bankruptcy court.

The controlling reason for our decision that the judgment rendered in this bill of review proceeding was the only proper judgment that could have been rendered is that the Garlingtons neither alleged nor proved facts requisite to set aside a judgment by bill of review. It was essential that the Garlingtons allege and prove facts showing they

had meritorious defense and that they were prevented from presenting that defense by the extrinsic fraud of the judgment creditor. They presented no fact that tended to show that any act of appellees prevented them from presenting any defense in cause 3807.

Appellants complain of the fact that we have taken notice of the records of this court in cause 3807.

> "An appellate court will take judicial notice of its own records and judgment on a former appeal in the same case, or in suits between the same parties involving the same subject matter. An appellate court may take judicial cognizance of the record in the original case, even without its being referred to. . . . And on appeal in a suit on a judgment the court will take judicial notice of its own action in a suit to set the judgment aside. So, also, on an appeal in a suit to set aside a judgment, the appellate tribunal may look to and consider its records on appeals in the action in which the judgment sought to be set aside was rendered." 3-A Tex. Jur. 493, 494. See also 3-B Tex. Jur. 270, 271.

The motion for rehearing is overruled.

May 13, 1955.

Collings, J., not sitting.

APPENDIX C.

Tr. 14-20

"JUDGMENT OF THE COURT"
No. 6745

J. S. GARLINGTON, ET AL	IN THE DISTRICT
VS.	COURT OF HOWARD
A. L. WASSON, ET AL	COUNTY, TEXAS

On this the 25th day of January, 1954, came on to be heard the above styled and numbered cause wherein J. S. Garlington, individually, and J. S. Garlington by and through J. D. Garlington as next friend are Plaintiffs, and A. L. Wasson and N. H. Reed are Defendants and came all of said parties both in person and by and through their attorneys of record and announced ready for trial, and came a jury of twelve good and lawful men who, being duly impaneled and sworn and having heard the pleadings, the evidence, and the argument of counsel on their oaths do, for their verdict in response to the following special issues, definitions and explanatory instructions submitted to them by the Court on the 8th day of February, 1954, make the following respective findings: " 'Public Auction', as that term is herein used, means a sale to highest bidder with absolute freedom for competitive bidding, free from any agreement to stifle competition or chill bidding. By the term "unsound mind" as used herein, is meant that there is an essential privation of the reasoning faculties, or where a person is incapable of understanding and acting with discretion in the ordinary affairs of life; it is not necessary that he be an imbecile but that he is without judgment sufficient to protect his rights.

SPECIAL ISSUE NO. 1

Do you find from a preponderance of the evidence that J. S. Garlington was of unsound mind on September 1st, 1937?

Answer "Unsound" or "Sound".

ANSWER: Sound.

SPECIAL ISSUE NO 2

Do you find from a preponderance of the evidence that J. S. Garlington has been of unsound mind at all times since September 1st, 1937?

Answer: "He has been" or "He has not been."

ANSWER: He has not been.

SPECIAL ISSUE NO. 2-A

Do you find from a preponderance of the evidence that A. L. Wasson knew, or by the exercise of reasonable diligence should have known, on or before May 24, 1941, that J. S. Garlington was a person of unsound mind, if you have found that he was?

Answer: "Yes" or "No".

ANSWER: No.

SPECIAL ISSUE NO. 2-B

Do you find from a preponderance of the evidence that N. H. Reed knew, or by the exercise of reasonable diligence should have known, at the time he made the agreement, if any, with A. L. Wasson to purchase the 2,560 acres of land in suit, that J. S. Garlington was a person of unsound mind, if you have found that he was?

Answer: "Yes" or "No."

ANSWER: No.

SPECIAL ISSUE NO. 3

Do you find from a preponderance of the evidence that J. S. Garlington or those acting for him, made an offer to pay off under provisions of decree as dated December 4, 1939 prior to January 2, 1940?

Answer: "Yes" or "No."

ANSWER: Yes.

SPECIAL ISSUE NO. 4

Do you find from a preponderance of the evidence that A. L. Wasson, acting in person or by and through his representatives, if any, refused to accept the offer so made?

Answer: "Yes" or "No."

ANSWER: Yes.

SPECIAL ISSUE NO. 5

Do you find from a preponderance of the evidence that when offer was made to pay A. L. Wasson the amount provided for in Court order dated December 4, 1939, if any was made, that an additional sum not provided for in said Court order was demanded?

Answer: "Yes" or "No."

ANSWER: Yes.

SPECIAL ISSUE NO. 6

Do you find from a preponderance of the evidence that the Trustee's Sale on January 2, 1940, was not made at Public Auction in front of the door of the Court house in Big Spring, Howard County, Texas?

Answer "Yes" or "No."

ANSWER: No.

SPECIAL ISSUE NO. 7

Do you find from a preponderance of the evidence that A. L. Wasson made an arrangement with N. H. Reed prior to Trustee's Sale on January 2, 1940 that caused N. H. Reed not to appear to make bid at said sale?

Answer "Yes" or "No."

ANSWER: No.

SPECIAL ISSUE NO. 8

Do you find from a preponderance of the evidence that A. L. Wasson made an agreement with N. H. Reed prior to the Trustee's Sale on January 2, 1940, to the effect that A. L. Wasson would sell to N. H. Reed the land in suit for less amount than was provided for in the written agreement, if any, between N. H. Reed and J. D. Garlington, the son of J. S. Garlington?

Answer: "Yes" or "No."

ANSWER: No.

SPECIAL ISSUE NO. 11

Do you find from a preponderance of the evidence that during the time that it was pending, J. S. Garlington lacked sufficient mental capacity to understand the nature and probable consequense of the suit against him which began January 3, 1940 and which resulted in judgment on May 24, 1941?

Answer: "He did lack sufficient capacity" or "He did not lack sufficient mental capacity."

ANSWER: He did not lack sufficient mental capacity.

SPECIAL ISSUE NO. 13

Do you find from a preponderance of the evidence that the interests of J. S. Garlington were not adequately represented in the suit brought by A. L. Wasson against J.

S. Garlington on January 3, 1940 and which resulted in judgment on May 24, 1941?

Answer: "They were not adequately represented" or "They were adequately represented."

ANSWER: They were adequately represented.

SPECIAL ISSUE NO. 14

Do you find from a preponderance of the evidence that J. D. Garlington, acting for himself and as next friend for J. S. Garlington is now ready, able and willing to do equity by making payment of any sum legally due A. L. Wasson and/or N. H. Reed?

Answer: "Yes" or "No."

ANSWER: Yes.

SPECIAL ISSUE NO. 14-A

Do you find from a preponderance of the evidence that on September 3, 1937, J. S. Garlington lacked sufficient mental capacity to understand the nature and probable consequences of the Deed of Trust to A. L. Wasson, Trustee, bearing that date?

Answer: "He did lack sufficient mental capacity" or "He did not lack sufficient mental capacity."

ANSWER: He did not lack sufficient mental capacity.

SPECIAL ISSUE NO. 16

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1940?

Answer in Dollars and Cents per acre, if any:

ANSWER: 50¢.

SPECIAL ISSUE NO. 17

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1941?

Answer in Dollars and Cents per acre, if any:

ANSWER: 50¢.

SPECIAL ISSUE NO. 18

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1942?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 19

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1943?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 20

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1944?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 21

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1945?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 22

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1946?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 23

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1947?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 24

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1948?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 25

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1949?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 26

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1950?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 27

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1951?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 28

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1952?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

SPECIAL ISSUE NO. 29

From a preponderance of the evidence what was the reasonable annual rental value, if any, of the 2,560 acres of land herein involved for the year 1953?

Answer in Dollars and Cents per acre, if any:

ANSWER: 75¢.

The findings were received by the Court and were filed and entered of record on the minutes of such Court:

Whereupon the Plaintiff having made and the Court having duly heard and considered a motion for judgment, and such additional consideration and findings as were authorized by law having been had and made and the Court being of the opinion that such judgment should be rendered as follows: For the Defendants:

It Is Therefore Ordered, Adjudged, And Decreed by the Court that the said Plaintiff, J. D. Garlington and J. S. Garlington and J. D. Garlington as next friend for J. S. Garlington take nothing by their suit herein, and that all costs herein be adjudged against them, for which let execution issue.

All affirmative relief sought by either party hereto not specifically herein granted is hereby denied.

Entered this the 26th day of April, 1954.

/s/ Charlie Sullivan
District Judge

APPENDIX D.

From the

CONSTITUTION OF THE UNITED STATES

From Article VI:

"This Constitution and the Laws of the United States which shall be made in pursuance thereof;" . . . "shall be the supreme Law of the Land; and the Judges in every state shall be found thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" . . . "and all" . . . "judicial Officers," . . . "of the several States, shall be bound by Oath or Affirmation, to support this Constitution;" . . .

From Article I, Section 8, Clause 4:

"The Congress shall have power" . . . "To establish" . . . "uniform Laws on the subject of Bankruptcies throughout the United States;" . . .

From the

LAWS OF THE UNITED STATES

11 USC Section 203 (n), (o), and (p), as quoted and applied in *Kalb* v. *Feuerstein*, 308 US 433 at 440-441:

The Act expressly provided:

"(n) The filing of a petition . . . shall immediately subject the farmer and all his property, wherever located . . . to the exclusive jurisdiction of the court, including . . . the right or the equity of redemption where the period of redemption has not or had not expired, . . . or where the sale has not or had not been confirmed," and "In all cases where, at the time of filing the petition, the period of redemption has or had not expired, . . . or where the sale has not or had not been confirmed, . . . the period of re-

demption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section"; and

"(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and to the confirmation or other disposition of the composition or extension by the court:

". . .

"(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

". . .

"(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

"(p) The prohibitions . . . shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors as provided for in section 75 of this Act."

From the

LAWS OF TEXAS

From the Revised Civil Statutes of Texas, 1925:
Article 3810. Sale under deed of trust.

All sales of real estate made under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated. Where such real estate is situated in more than one county then notices as herein provided shall be given in both or all of such counties, and the real estate may be sold in either county, and such notice shall designate the county where the real estate will be sold. Notice of such proposed sale shall be given by posting written notice thereof for three consecutive weeks prior to the day of sale in three public places in said county or counties, one of which shall be made at the courthouse door of the county in which such sale is to be made, and if such real estate be in more than one county, one at the courthouse door of each county in which said real estate may be situated, or the owner of such real estate may, upon written application, cause the same to be sold as provided in said deed of trust or contract lien. Such sale shall be made at public vendue between the hours of 10 o'clock A.M. and 4 o'clock P.M. of the first Tuesday in any month. When any such real estate is situated in an unorganized county, such sale shall be made in the county to which such unorganized county is attached for judicial purposes.

APPENDIX E.

Tr. 163

IN THE DISTRICT COURT
HOWARD COUNTY, TEXAS

No. 3807

A. L. WASSON, PLAINTIFF
vs.
J. S. GARLINGTON, ET UX, DEFENDANTS

JUDGMENT

May 24, 1941

PLAINTIFF'S EXHIBIT 5, DEFENDANT'S EXHIBIT 13 (p. 1024 S.F.)

A. L. WASSON, Plaintiff)
vs.)
J. S. GARLINGTON, ET UX, Defendants.)
Cecil Collings, Judge

Came the Plaintiff, in person and by his Attorney, and the Defendants, in person and by their Attorney, be it remembered, in due course of the call of this cause, and each of the parties announced ready for trial, waived a jury, and each of the parties having presented their pleadings, and evidence, submitted the cause to the Court; and the Court is of the opinion that the law and the facts are with Plaintiff and he ought to recover of and from the Defendants as prayed for in his petition and that the lien created by the sequestration should be foreclosed.

IT IS FURTHER ORDERED AND DECREED as the judgment of this Court, that the Plaintiff, A. L. Wasson have and recover of the Defendants, J. S. Garlington and his wife Jennie L. Garlington, the possession of the property described as follows:

All of Section No. Twenty (20), No. Twenty-one (21), Twenty-two (22), and Twenty-three (23), in Block Twenty-five (25) of the H. & T. C. Ry. Company Surveys, situated in Howard County, Texas;

. . . and further that the said Plaintiff have his title to the said land quieted, as against said defendants; and the Court here now holds that the foreclosure of that lien created in the Deed of Trust of September 3, 1937, wherein C. L. Wasson was made Trustee and wherein the said Defendants executed and delivered to A. L. Wasson a note for the sum of $5,000 due on or before September 1st, 1939, is regular and that the Trustee's Deed of January 2nd, 1940, as recorded in Volume 105, page 617 Deed Records of Howard County, Texas, did convey full and complete title to the said land above described unto the said Plaintiff A. L. Wasson, and did divest the said Defendants J. S. Garlington and wife Jennie L. Garlington of all right, title and interest in and to the said land, either as to title or as to the possession thereof, and that the Plaintiff's right to possession has existed since the date of the sale of the land under the Deed of Trust, and the Writ of Sequestration lien is hereby held valid as of the date of its levy; and it is the order further of this Court that costs of this cause be assessed against the Defendant J. S. Garlington.

To which action of the Court of Defendants, then and there, in open Court excepted, and gave notice of appeal to the Court of Civil Appeals of the Eleventh Supreme Juridical District of Texas.

May 24th, 1941.

(signed) Cecil C. Collings
Judge.

18/24

Office - Supreme Court, U.S.
FILED
NOV 8 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 115

J. S. GARLINGTON by Donald Garlington as next friend, the said J. S. Garlington in his own behalf individually, and Donald Garlington individually as sole heir at law of Jennie Lou Garlington, deceased wife of said J. S. Garlington,

Appellants,

vs.

A. L. WASSON and wife MARTHA WASSON and N. H. REED,

Appellees.

APPEAL FROM THE COURT OF CIVIL APPEALS, ELEVENTH SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS, EASTLAND, TEXAS

Petition for Rehearing

(Application for Consideration of the Papers whereon Appeal was taken as a Petition for Certiorari)

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UNITED STATES LAW PRINTING CO., CHICAGO 38, ILL. LA SEVIER 2-2361

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 115

J. S. GARLINGTON by Donald Garlington as next friend, the said J. S. Garlington in his own behalf individually, and Donald Garlington individually as sole heir at law of Jennie Lou Garlington, deceased wife of said J. S. Garlington,

Appellants,

vs.

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Petition for Rehearing

(Application for Consideration of the Papers whereon Appeal was taken as a Petition for Certiorari)

On October 8, 1956 the appeal in this case was dismissed "for want of jurisdiction".

A federal question was properly raised repeatedly in each of the three state courts below and necessarily passed upon by those courts. The Jurisdictional Statement explicitly asserted, sustained by the Record, that "the appellants clearly and repeatedly specially set up and claimed under the Constitution and statutes of the United States their title and right to their farm and their privilege and immunity from foreclosure". The Jurisdictional Statement, page 20, paragraph VI. Tr. 52, paragraph VI; Tr. 53, paragraph VIII; Tr. 100, paragraphs II and III; Tr. 20, paragraph IV; Tr. 104-110; Tr. 42-45.

Yet this Court did not treat the appeal papers as a petition for a writ of certiorari as required by 28 U. S. C. Sec. 2103 and as was suggested in the Jurisdictional Statement. Page 2, second paragraph; page 3, second paragraph; page 4, second full paragraph; page 6, third paragraph.

Counsel for the appellants is not informed as to the precise reason why this Court determined that it had no jurisdiction over the appeal. However he surmises that the Court felt that there had not been a sufficiently "explicit and timely insistence in the state courts that a state statute, as applied, is repugnant to the Federal Constitution, treaties or laws." *Charleston Federal Savings & Loan Assoc.* v. *Alderson,* 324 U.S. 182, 185. In the state courts appellants grounded their attacks on the state proceedings more in terms of the supremacy or preemption of the federal bankruptcy statute (Sec. 75 of the Bankruptcy Act; 11 U.S.C. Sec. 203)—as adjudicated by this Court in *Kalb* v. *Feuerstein,* 308 U.S. 433—than in terms of the constitutional invalidity of the state statutes under which the state proceedings were invoked. And while the federal question was properly raised in every pleading and brief in each of the state courts below, no decision

below explicitly referred to any contention or made any ruling as to the constitutional validity of any state statute. Under such circumstances, this Court might properly conclude that it had no jurisdiction to consider the case on appeal.

But inasmuch as the appellants did consistently and properly raise a federal question as to the supremacy or preemption of the federal bankruptcy statute, thereby defeating the application of state law, it is submitted that it is incumbent upon this Court to treat the Jurisdictional Statement as a petition for a writ of certiorari. As stated in *Charleston Federal Savings & Loan Assoc.* v. *Alderson,* (*supra*) 324 U.S. 182 at 187, the Court was "required" to so treat the appeal papers by virtue of 28 U. S. C. Sec. 2103. See also *Wilson* v. *Cook,* 327 U. S. 474, 482. The mere fact that the state courts below did not expressly pass upon this federal issue, but "plowed around it", does not defeat the existence of that question nor justify a failure to exercise this Court's jurisdiction under 28 U. S. C. Sec. 2103. The decisions below necessarily rejected the federal claim urged by the appellants in each of their pleadings and briefs. That claim covered the whole case and was of such a nature that the rights of the parties could not finally be determined without deciding that issue. Only by rejecting the supremacy of the federal bankruptcy statute could the courts below proceed to render judgment to the appellees under state law. Hence the judgments, by their necessary operation, denied appellants' federal claims. And this Court has jurisdiction to enquire by writ of certiorari as to the validity of those claims under such circumstances. *West Chicago St. R. Co.* v. *Illinois ex rel, Chicago,* 201 U. S. 506, 519-520. The federal claim having been distinctly set up and being broad enough to cover the entire case, "it may not be ignored, and this Court cannot refuse to determine whether the alleged fed-

eral right exists and is protected by the Constitution of the United States." *Chicago, B. & Q. R. Co.* v. *Illinois ex rel Com'rs,* 200 U.S. 561, 581.

For the reasons more fully set forth in the Jurisdictional Statement, it is respectfully submitted that the federal issue raised and necessarily rejected below is of sufficient substance and importance to warrant further review in this Court by way of certiorari. In *Kalb* v. *Feuerstein,* 308 U. S. 433, this Court emphatically declared no less than sixteen times in its unanimous opinion that all state statutes and proceedings are absolutely void, devoid of all power, when a farmer has on file a petition under Section 75 of the Bankruptcy Act; 11 U. S. C. Sec. 203. All matters relating to that petition thereafter become subject to the exclusive jurisdiction of the federal bankruptcy court. To countenance the foreclosure in the state courts below while the exclusive federal jurisdiction existed invites chaos and makes a mockery of the fundamental principle that the United States Constitution and the laws enacted in pursuance thereof are the supreme law of the land, binding on all courts and individuals. See also *Commonwealth of Pennsylvania* v. *Nelson,* 350 U. S. 497.

It is requested therefore that this petition for rehearing be granted and that this Court consider the Jurisdictional Statement as a petition for a writ of certiorari under 28 U. S. C. Sec. 2103. On that basis a writ of certiorari should issue to determine the important federal question raised and necessarily rejected by the courts below.

Respectfully submitted,

ELMER MCCLAIN
Counsel for Petitioners-Appellants

T. B. COFFIELD
Bowie, Texas
PAUL DONALD
J. M. DONALD
Bowie, Texas

Certificate of Counsel.

I certify that the foregoing application for the consideration of the appeal papers as a petition for a writ of certiorari is submitted on good faith, not for delay, upon the ground that the appeal papers were not considered as a petition for certiorari pursuant to 28 U. S. C. Sec. 2103 and is filed within the time extended by an Associate Justice of this Court.

ELMER MCCLAIN

Counsel for the
Petitioners-Appellants

No. 115. GARLINGTON ET AL. *v.* WASSON ET AL. Appeal from the Court of Civil Appeals of Texas, Eleventh Supreme Judicial District. *Per Curiam:* The appeal is dismissed for want of jurisdiction.* *Elmer McClain* for appellants. Reported below: 279 S. W. 2d 668.